

TESTIMONY OF ROBERT D. TOBIN
IN SUPPORT OF HOUSE BILL NO. 5506

Mr. Chairman, Members of the Committee.

I am Robert Tobin, an attorney with Tobin, Carberry, O'Malley, Riley & Selinger, P.C. of New London Connecticut.

For a number of years now, my office has represented a number of hospitals in connection with workers' compensation cases involving payment for those bills.

The hospitals include:

- Bridgeport Hospital
- Hospital of Central Connecticut
- William W. Backus Hospital
- Lawrence and Memorial Hospital
- St. Francis Hospital
- Stamford Hospital
- Greenwich Hospital
- Middlesex Hospital
- Day Kimball Hospital
- Hospital of St. Raphael
- Waterbury Hospital
- Yale-New Haven Hospital

In 2008, we began receiving cases from several hospitals which had been reviewed by a company called Fairpay Solutions from Texas on behalf of certain insurance companies and large self-insured employers. The first thing I noticed was that the company was recommending payments to Connecticut hospitals at less than what a charity case would pay. The second thing I found out was that any attempt to get a meaningful resolution fell on deaf ears. Many attempts by our clients and us were simply ignored.

So began an 8 or 9 year odyssey which continues today.

The employers and carriers relied on language that has been in the workers' compensation law since 1913. The hospitals contended, however, that workers' compensation insurers and

employers were to be treated like any other insurance company paying for hospital services – they were required to pay so-called pricemaster charges unless they had negotiated a different rate of reimbursement as most carriers did.

Eventually, with the assistance of the Workers' Compensation Commission, we came up with a solution. We would take a group of test cases through the system. Everyone understood from the outset the Connecticut Supreme Court would resolve the standard which applies to these cases.

In September 2012, Commissioner David Schoolcraft of the Second District in Norwich issued a ruling in favor of Lawrence and Memorial Hospital and Backus Hospital in the test cases. The parties to those test cases were clients of Fairpay Solutions including Liberty Mutual Insurance Company and Electric Boat Corporation.

In 2013 and 2014, the issue of hospital payments in workers' compensation cases came before the legislature. In 2014, the General Assembly enacted legislation requiring the Commission to adopt a fee schedule governing hospital bills commencing April 1, 2015. Everyone understood that the pre-fee schedule cases would be left to the courts.

In March 2015, a unanimous Supreme Court in an opinion authored by newly appointed Justice Andrew McDonald again ruled in favor of the hospitals.

During the June 2015 special session, a section was put into the budget implementer bill which our opponents claim was intended to overrule Justice McDonald's decision and to retroactively eliminate many cases including several thousand already pending.

This implementer language was inserted without any notice to or input from the hospitals or the Workers' Compensation Commissioner's Office. Neither the hospitals nor the Chairman

were even aware of it until the morning of the day it passed. There is no mention in any of the legislative history that the bill was intended to overrule the Supreme Court decision.

Under well-established principles of law, the substantive changes and the new statute of limitation contained in the implementer bill should not be applied retroactively. Further, it is probably unconstitutional to do so. In addition, leaving things as they now stand will result in years more litigation before the Commission and in the Courts, and probably require another decision by the Supreme Court.

Some have expressed a concern that the Supreme Court decision would allow reconsideration of previously settled cases and open the floodgates to allow many other unresolved claims to be filed. Any cases that have been truly settled are the subject of binding agreements between the parties which have been incorporated into stipulations approved by the Chairman of the Workers' Compensation Commission. They are not entitled to be refiled for additional compensation. And, the General Assembly could constitutionally enact a short limitation period for cases that have not been filed to address the issue of additional cases.

The hospitals request that it be made clear that the implementer bill was not intended to overrule the Supreme Court decision and impose upon the Workers' Compensation Commission the case-by-case analysis which the Supreme Court held was completely unworkable. Certainly it should be made clear that the legislature did not intend to affect the several thousand pending cases which were on hold awaiting the result of the Supreme Court ruling.

The hospitals are willing at any time to meet with parties who have any interest in this issue to work out a solution which, while confirming the Supreme Court ruling, addresses concerns with regard to additional cases in a constitutional and reasonable way.